

NORANDA EXPLORATION, INC.

IBLA 85-225

Decided May 19, 1986

Appeal from a decision of the Anchorage District Office, Alaska, Bureau of Land Management, declaring a lode mining claim null and void ab initio. AA-14415.

Set aside and remanded.

1. Mining Claims: Lands Subject to

BLM may properly declare a mining claim located on land patented without a mineral reservation null and void ab initio. However, where the record indicates the claim may only partially be located on patented land, the decision will be set aside and the case will be remanded to BLM for a readjudication of the validity of the claim.

APPEARANCES: William C. Block, Senior Geologist, Noranda Exploration, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Noranda Exploration, Inc., has appealed from a decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), dated November 30, 1984, declaring the Deana M-8 lode mining claim, AA-14415, null and void ab initio.

Appellant's mining claim was originally located July 17, 1977, and filed for recordation with BLM on September 21, 1977, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). ^{1/} The claim is situated in the unsurveyed SE 1/4 sec. 29, T. 78 S., R. 88 E., Copper River Meridian, Alaska. In its November 1984 decision, BLM declared appellant's mining claim null and void ab initio because the land included in the claim and other land totaling 142.008 acres had been patented (Patent No. 644362), with no mineral reservation, to the

^{1/} The claim was amended on Nov. 26, 1977, and the amended location notice was filed for recordation with BLM on Dec. 5, 1977.

Moira Copper Company (Moira) on August 14, 1918, and was not open to mineral entry at the time appellant located its claim.

In its statement of reasons for appeal, appellant acknowledges the prior rights of Moira in its patented claims but argues that portions of appellant's mining claim lie outside patented land, as depicted on a map submitted with the statement of reasons. Appellant states that "since no mutually compatible survey exists, the relative positions of the patented claims and * * * [our] claim are unknown."

[1] It is well established that mining claims located entirely on land which has been patented without a reservation of minerals by the United States are properly declared null and void ab initio. Pat Ray McClane, 85 IBLA 241 (1985); Donly Gray, 82 IBLA 46 (1984).

However, appellant asserts that portions of the Deana M-8 lode mining claim are located on land which was not patented to Moira. In declaring appellant's mining claim null and void ab initio, BLM apparently relied on a master title plat for T. 78 S., R. 88 E., Copper River Meridian, Alaska, which depicts the mineral survey encompassing the land patented to Moira (MS 744) as situated approximately 400 feet east of Lake Luella. In contrast, the survey plat for MS 744, dated November 17, 1906, depicts the westerly boundary of the claims as contiguous to Lake Luella. Overall, the location of patented lands in MS 744 appears to have been shifted to the southeast on the master title plat to a position which would encompass any mining claim situated in the southeastern corner of sec. 29, T. 78 S., R. 88 E., Copper River Meridian, Alaska (which is where appellant places the claim). In its position, as shown on the mineral survey plat, the patented land may not encompass all of appellant's mining claim, as appellant contends.

In view of the discrepancy between the location of patented claims as shown on the mineral survey plat and their location on the master title plat, we must set aside BLM's November 1984 decision and remand the case to BLM for a reevaluation of whether appellant's mining claim lies entirely within patented land included in MS 744. See Savage Construction Co., 79 IBLA 389 (1984); Harl and Jewell Rightmire, 53 IBLA 125 (1981). Because the ultimate question is the relative position of appellant's mining claim and those claims in MS 744, this reevaluation will probably necessitate a survey of the location of appellant's claim on the ground. In the absence of a survey or other satisfactory evidence, the existing record will not support a finding by BLM that appellant's claim does not encompass two fragments of land open to location, in the manner depicted on the map submitted by appellant on appeal.

If appellant's mining claim is partially located on patented lode mining claims, assuming appellant's discovery is on the land open to location, appellant would be entitled to extend the end lines of its claim across the patented lode mining claims. Zula Brinkerhoff, 75 IBLA 179 (1983). See also Cominco American, Inc., 84 IBLA 209 (1984); Santa Fe Mining, Inc., 79 IBLA 48 (1984); Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co., 171 U.S. 55 (1898).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM for further action consistent herewith.

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge.

